

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,
INC.

Plaintiffs and
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**ASSENTED TO MOTION TO IMPOUND MATERIALS DESIGNATED
UNDER THE PARTIES' STIPULATED PROTECTIVE ORDER
AND CITED IN SUPPORT OF DEFENDANT EARTH PRODUCTS
INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT THAT
PLAINTIFF MEYNARD DESIGNS, INC. ABANDONED THE TRADE
ASSOCIATED WITH THE "EARTH" AND "EARTH SHOE" TRADEMARKS**

Pursuant to District of Massachusetts Local Rule 7.2 and Section 8 of the Stipulated Protective Order (Dkt. No. 30), Defendant Earth Products Inc. ("Earth Products") moves this Honorable Court for an Order impounding and sealing the following documents:

1. DEFENDANT EARTH PRODUCTS INC.'S MOTION FOR PARTIAL SUMMARY
JUDGMENT THAT PLAINTIFF MEYNARD DESIGNS, INC. ABANDONED THE

TRADE ASSOCIATED WITH THE “EARTH” AND “EARTH SHOE”

TRADEMARKS, AND MEMORANDUM IN SUPPORT (“Motion for Partial Summary Judgment of Abandonment”) (approx. 30 pages);

2. DERRICK W. TODDY DECLARATION IN SUPPORT OF EARTH PRODUCTS INC.’S MOTION FOR PARTIAL SUMMARY JUDGMENT THAT PLAINTIFF MEYNARD DESIGNS, INC. ABANDONED THE TRADE ASSOCIATED WITH THE “EARTH” AND “EARTH SHOE” TRADEMARKS (“Toddy Declaration”) (approx. 30 pages);
3. EXHIBITS 1, 4, 12-13, 16, 18, 20-27, 29-34, 51-80, 82, 84-97, and 99-101 to the Toddy Declaration (approx. 250 pages); and
4. CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANT EARTH PRODUCTS INC.’S MOTION FOR SUMMARY JUDGMENT THAT PLAINTIFF MEYNARD DESIGNS, INC. ABANDONED THE TRADE ASSOCIATED WITH THE “EARTH” AND “EARTH SHOE” TRADEMARKS (“Concise Statement”) (approx. 5 pages).

These materials (collectively, “Earth Products’ PSJ of Abandonment Materials”) together total approximately 315 pages.

This motion is necessitated by the fact that the parties designated documents which are quoted and/or discussed in the Motion for Partial Summary Judgment of Abandonment, the Toddy Declaration, and the Concise Statement under the Stipulated Protective Order. Accordingly, Earth Products requests an order authorizing the Earth Products’ PSJ of Abandonment Materials to be filed under seal and impounded.

The Clerk should impound these materials as described in Section 8 of the Stipulated Protective Order (Dkt. No. 30), *i.e.*, until 30 days after the conclusion of this case in this District Court.

Pursuant to Section 8 of the Stipulated Protective Order, Plaintiffs Meynard Designs, Inc. and Earth, Inc. and Third-Party Defendant Planet, Inc. have assented to this motion.

Dated: October 31, 2007

By: /s/ Derrick W. Toddy
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CERTIFICATE OF SERVICE

I certify that this ASSENTED TO MOTION TO IMPOUND MATERIALS DESIGNATED UNDER THE PARTIES' STIPULATED PROTECTIVE ORDER AND CITED IN SUPPORT OF DEFENDANT EARTH PRODUCTS INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT THAT PLAINTIFF MEYNARD DESIGNS, INC. ABANDONED THE TRADE ASSOCIATED WITH THE "EARTH" AND "EARTH SHOE" TRADEMARKS is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF).

Counsel for other parties are also being served by electronic mail on the date of electronic filing.

Dated: October 31, 2007

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